

**REMARKS/ARGUMENTS**

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-13, 15-16 and 18-37 are pending in this application. Claim 37 has been withdrawn from consideration.

**Allowable Subject Matter:**

Claims 18-22, 29 and 34-35 have been indicated as being allowable. Also, the Office Action does not provide any basis of rejection for claim 31 and thus Applicant believes that this claim is allowable.

**Rejections Under 35 U.S.C. §103:**

Claims 1, 3 and 36 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wulkan et al (WO '749, hereinafter "Wulkan") in view of Honig et al ("Usage-Based Pricing...", hereinafter "Honig") and Easki et al (U.S. '547, hereinafter "Easki"). Applicant respectfully traverses this rejection.

In order to establish a prima facie case of obviousness, all of the claim limitations must be taught or suggested by the prior art. Applicant respectfully submits that the three-way combination of Wulkan, Honig and Easki fails to teach or suggest distributing a tariff to a multiplicity of customer terminals connected to a communications network, the tariff comprising a formula for calculating a charge as a function of a loading of the communications network, as required by claims 1, 3 and 36.

Wulkan discloses a storage unit 30 which may be used to store provider and tariff information received from a data server 20 and which may be accessed by a router 32 to calculate an optimum least cost route (LCR) for a telephone call. None of the tariffs are expected to be dynamic. The prices charged for different categories of calls are thus

determined in advance for a specified duration of validity. Page 4, lines 15-17 of the Office Action admits “Wulkan is silent on tariff associated with a formula for calculating a charge as a function of loading of a network, and internetworking protocol.”

Honig discloses a pricing model in which the prices vary in a way that cannot be known in advance in order to control traffic congestion. It is the network in Honig that must calculate an instantaneous spot price for usage because only the network has the relevant information about the levels of congestion within the network. For example, Honig explicitly states “The gateway announces a price P per packet.” (See page 869, col. 1, line 2 of Honig). The “gateway” in this portion of Honig is a node in the network to which users send their data bound for the network. The “gateway” is thus clearly a network component. Accordingly, it is the network which calculates the instantaneous spot price P and “announces” this to each of the users so that each of the users can decide whether or not to transmit any data. (See, e.g., the abstract of Honig, lines 6-9).

Wulkan therefore fails to teach or suggest distributing a tariff having a formula for calculating a charge as a function of network loading to a multiplicity of customer terminals connected to the network. As described above, the network of Wulkan determines the spot price P. The network then announces (through its gateway) this price P to the users. No formula is sent to the user terminals.

Easki fails to remedy the above described deficiencies of the combination of Wulkan and Honig. In particular, Easki fails to disclose distributing tariffs to customer terminals, let alone distributing tariffs which comprise a formula for calculating a charge as a function of network loading. Easki’s proposed solution to network congestion is not dynamic pricing, but rather notifying transmitters of traffic along congested paths in the

hope that they will voluntarily reduce the rate at which they are sending data. There is no reason in Easki to have a tariff depending on the loading of the network.

Accordingly, even if the teachings of Wulkan, Honig and Easki were combined as proposed by the Office Action, the combination would not have taught or suggested all of the claim limitations. The purpose of Wulkan's system is to help a user choose the best (e.g., cheapest) network to use for making his/her telephone call. If Wulkan's system were modified to incorporate the teachings of Honig, the hypothetically combined system would simply present the current spot price P announced by a network to a user so that the user can determine the best way to make his/her telephone call. There is no need for, or even a possibility of, the system of Wulkan containing a tariff comprising a formula for calculating a charge as a function of network loading since any formula used for calculating the instantaneous spot price P would be contained and used only within the network.

Accordingly, Applicant respectfully submits that claims 1, 3 and 36 are not "obvious" over Wulkan, Honig and Easki, and therefore respectfully requests that the rejection of these claims under 35 U.S.C. §103 be withdrawn.<sup>1</sup>

Claims 2, 6-7, 10, 13-16, 23-26 and 33 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wulkan in view of Honig and Easki and further in view of Saari et al (U.S. '046, hereinafter "Saari"). Applicant respectfully traverses this rejection. Claims 2, 6-7, 10, 13 and 15 depend at least indirectly from claim 1 (discussed above). Applicant submits that Saari fails to remedy the above described deficiencies of

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<sup>1</sup> The Office Action does not appear to explicitly set forth a basis of rejection of claims 4-5 and 8-9.

Wulkan, Honig and Easki. For example, Saari fails to disclose tariffs distributed to customer terminals which comprise a formula for calculating a charge as a function of the loading of the communications network. Indeed, Saari discloses all of the charge processing being performed within a network.

Independent claim 16 requires, *inter alia*, a plurality of different tariffs distributed to a respective customer terminal attached to a communications network, one or more of the different tariffs being varied in dependence upon the loading of network resources and the plurality of different tariffs having different respective volatilities. The four-way combination of Wulkan, Honig, Easki and Saari fails to teach or suggest these claim limitations. In particular, Saari fails to disclose tariffs having different volatilities.

Independent claim 23 requires, *inter alia*, distributing a tariff to a multiplicity of customer terminals connected to a communications network including communicating separately a formula for calculation of network charges and coefficients for use in the formula. The four-way combination of Wulkan, Honig, Easki and Saari fails to teach or suggest these claimed features. Saari simply describes numerous occasions that a user's cost will typically depend on parameters which the user is able to choose such as the nominal bit rate and/or a specified priority level for traffic falling within the agreed parameters. The various formulas described by Saari are for calculating a packet's priority level depending on the actual measured bit rate compared to the user's agreed upon and paid for nominal bit rate. Saari fails to teach or suggest tariffs which are distributed with formulas and coefficients distributed to a customer terminal separately.

Independent claim 26 requires, *inter alia*, "a processor connected to the meter and to the store and arranged to calculate using the tariff information and information relating

to the measured use by the customer terminal of the network and information relating to the measured state of the network, a network usage charge.” The four-way combination of Wulkan, Honig, Easki and Saari fails to teach or suggest this claimed feature.

Accordingly, Applicant submits that the rejection of still pending claims 2, 6-7, 10, 13, 15-16, 23-26 and 33 under 35 U.S.C. §103 be withdrawn.

Claims 11-12, 30 and 32 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Wulkan in view of Honig and Easki and further in view of Okamoto. Applicant respectfully traverses this rejection. Since claims 11-12 and 30 depend at least indirectly from claim 1, all of the comments made with respect to Wulkan, Honig and Easki apply equally to these claims. Okamoto fails to remedy these deficiencies. Independent claim 32 requires, *inter alia*, “automatically varying, depending on network loading as detected at a customer terminal, a tariff for network usage by a customer terminal, the tariff being distributed to the terminal and comprising a formula for calculating a charge as a function of the loading of the communications network for use by the customer terminal.” The four-way combination of Wulkan, Honig, Easki and Okamoto fails to teach or suggest this claimed feature.

Accordingly, Applicant respectfully submits that claims 11-12, 30 and 32 are not “obvious” over Wulkan, Honig, Easki and Okamoto and respectfully requests that the rejection of these claims under 35 U.S.C. §103 be withdrawn.

***BRISCOE et al.***  
***Application No. 09/674,717***  
***April 20, 2005***

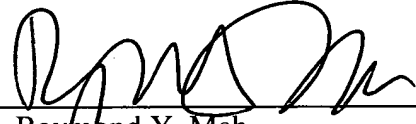
**Conclusion:**

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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